



MASSACHUSETTS DEPARTMENT OF REVENUE
SALES AND USE TAX
LIQUIDATION SALES; TRUSTEE IN BANKRUPTCY

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FACTS:

A duly authorized trustee in bankruptcy liquidates all of the assets of a debtor retail furniture business. In the course of the liquidation, the trustee sells the following:

- miscellaneous floor lamps and other items of furniture to regular customers;
- ten floor lamps in a single lot to another furniture dealer;
- the cash register and computer terminals;
- a used delivery truck.

GOVERNMENT DOCUMENTS
COLLECTION

SEP 23 1988

ISSUE:

Is the trustee required to collect sales tax on the sale of any of the listed items?

DISCUSSION:

Massachusetts imposes an excise on sales at retail of tangible personal property by any vendor, but exempts from the sales tax those sales which it is prohibited from taxing under the constitution or laws of the United States. G.L. c. 64H, § 2; G.L. c. 64H, § 6(a). Under 28 U.S.C. § 960,

officers and agents conducting any business under authority of a United States court shall be subject to all Federal, State and local taxes to the same extent as if it were conducted by an individual or corporation.

Id. The phrase "conducting any business" is "construed to include any activity or operation in connection with the handling and management of the bankrupt estate." *In re Warmings A.G. Food Center*, 50 Bankr. 748 (D. Me.), *aff'd without opinion*, 782 F.2d 1024 (1st Cir. 1985). Thus the trustee's liquidation of the assets of the bankrupt is subject to sales tax unless it is exempt under some other provision of G.L. c. 64H.

General Laws c. 64H, § 6(c) exempts casual and isolated sales by a vendor who is not regularly engaged in making sales at retail. The use tax is, however, imposed on the casual and isolated sale of any motor vehicle, trailer, boat or airplane unless the buyer is the spouse, mother, father, brother, sister or child of the seller. G.L. c. 64I, § 7(b).

Under Regulation 830 CMR 64H.6.1, sales by executors, administrators, trustees, receivers or other fiduciaries are generally considered "casual and isolated" and thus exempt from the sales tax unless the fiduciary continues to operate the business as a seller.

Where a fiduciary sells inventory, the casual and isolated sales exemption does not apply because the fiduciary is "continu[ing] to operate the business as a seller." Thus the trustee must generally collect and pay over the tax on the sale of the lamps and other items of inventory sold. The trustee will not be required to collect the tax on any item sold to another for resale in the regular course of business. The trustee may take a resale certificate from the buyer at the time of purchase in lieu of paying the sales tax. G.L. c. 64H, § 8(a), (b).

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The sales of the fixtures or equipment of the business are exempt from the tax as casual and isolated, since the seller is not regularly engaged in making such sales at retail. See 830 CMR 64H.6.1. The sale of the delivery truck is likewise casual and isolated, but use tax under G.L. c. 64I is imposed on the sale. The buyer of the vehicle will pay the use tax; the seller does not collect or pay over the tax.

DIRECTIVE: The trustee must collect and pay over the sales tax on sales made to retail customers out of the regular inventory of the business unless such sales are made for resale. Casual and isolated sales are exempt from tax, except for the sale of any motor vehicle, trailer, boat or airplane. Thus:

- the individual sales of the lamps and other furniture to retail customers are subject to the tax since the vendor ordinarily sells such items in the regular course of business;
- the sale of any item for resale is not subject to tax; thus the sale of the lot of lamps to another dealer is exempt. The vendor may take a resale certificate in lieu of payment of the sales tax;
- sales of the equipment or fixtures of the business such as the cash register and computer terminals are exempt as casual and isolated;
- the casual and isolated sale of any motor vehicle is subject to use tax under G.L. c. 64I except in the limited circumstances set out above. The purchaser will pay the use tax on the used truck at the time of registration.

Whenever the trustee is required to collect the sales tax, he will use the vendor number of the business being liquidated and report the tax due on Form ST-9 (Sales and Use Tax Return). The tax is due on or before the twentieth day of the month following that in which the liquidation sale takes place. G.L. c. 64H, § 2; G.L. c. 62C, § 16(h).

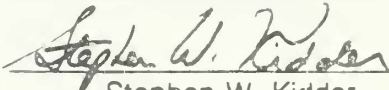
This Directive modifies and replaces Letter Ruling 82-51; it is prospective only and applies to liquidation sales occurring on or after July 1, 1988.

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REFERENCE: 28 U.S.C. § 960; G.L. c. 62C, § 16(h); G.L. c. 64H, §§ 2, 6(a), (c), 8(a), (b); G.L. c. 64I, § 7(b); *In re Warmings A.G. Food Center*, 50 Bankr. 748 (D. Ma.), *aff'd without opinion*, 782 F.2d 1024 (1st Cir. 1985); 830 CMR 64H.6.1.

June 1, 1988


Stephen W. Kidder
Commissioner of Revenue

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This Directive represents the official position of the Department of Revenue on the application of the law to the facts as stated. The Department and its personnel will follow this Directive, and taxpayers may rely upon it, unless it is revoked or modified pursuant to 830 CMR 62C.01(5)(e). In applying this Directive, however, the effect of subsequent legislation, regulations, court decisions, Directives, and TIRs must be considered, and Department personnel and taxpayers may rely upon this Directive only if the facts, circumstances and issues presented in other cases are substantially the same as those set forth in this Directive.